



# WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

---

October 3, 2003

Mr. Scott Hassett, Secretary  
Department of Natural Resources  
101 South Webster Street  
Madison, WI 53702

**RE: Clearinghouse Rule 02-097, Control of Hazardous Air Contaminants**

Dear Secretary Hassett,

This letter follows up on the requests from earlier this year by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources for modifications in Clearinghouse Rule 02-097.

This rule relates to the control of hazardous air contaminants under NR 445. While the rule contains many desirable features – the safe harbor and incidental emitters provisions, which we commend the Department for including – we have three main concerns with the rule that we ask the Department to address in modifications to it. Those concerns relate to the Department's procedures for determining the need to expand the list of hazardous air contaminants in the rule, the treatment of diesel generators, and potential for regulation of malodorous emissions from agriculture operations and livestock.

**Need to Regulate Additional Contaminants**

Under s. 285.27 (2) (b), Stats., if the U.S. Environmental Protection Agency has not promulgated an emissions standard for a hazardous air contaminant under SEC. 112 of the Federal Clean Air Act, the Department of Natural Resources (DNR) may promulgate an emissions standard for the contaminant if the DNR "*finds the standard is needed to provide adequate protection for public health or welfare*" (emphasis added).

Upon reviewing Clearinghouse Rule 02-097, we believe the methodology used to identify chemicals to add to ch. NR 445 and to set emission limits for the added chemicals is incomplete, and thus inadequate. In particular, for most of the chemicals on the lists in the rule – other than the list for incidental emitters – it appears the principal criterion used by the Department in selecting a chemical and setting the emission limit is the toxicity of the chemical.

We believe toxicity is only one of a number of considerations that needs to go into making a finding that a particular standard or limit is needed to provide adequate protection for public health or welfare. Other information the Department should consider and document as part of its risk matrix in establishing an appropriate emission limit for a hazardous air contaminant emitted by a specific class of sources in Wisconsin include:

1. Identification of the known sources in Wisconsin that release the contaminant and the magnitude of their releases, and identification of human populations susceptible to these releases.
2. Analysis of the expected exposure of susceptible populations to the contaminant and whether that exposure will result in the intake of amounts of the contaminant above applicable health or environmental standards.
3. Evaluation of alternative control strategies, including alternative emission limits, for addressing exposures that exceed relevant health or environmental standards to identify the preferred alternative that is most practical and cost-effective.

We request the Department apply this risk matrix in the current rule-making to all of the chemicals added to the lists in ch. NR 445 by the rule-making. To facilitate this effort, the Department could group the chemicals in appropriate categories to establish priorities and to facilitate applying the risk matrix first to the chemicals that are believed to pose the most significant health concerns.

In addition, we request the risk matrix be incorporated into s. NR 445.13, relating to review of hazardous air contaminant requirements, so the matrix will be applied to any new chemical being considered for future addition to ch. NR 445. Section 445.13 should also be amended to state a policy that before additional chemicals, beyond those identified in Clearinghouse Rule 02-097, are added to ch. NR 445, all of the chemicals in the original version of ch. NR 445 and their associated emission limits will be reviewed under the risk matrix.

### **Diesel Generators**

We believe the provisions in s. NR 445.09 that establish fuel, control, and compliance requirements for “compression ignition internal combustion engines combusting fuel oil” (i.e., diesel generators) are unnecessary in light of existing and pending federal regulations of diesel fuels and engines and of engine test facilities. As such, we request the rule be modified to remove s. NR 445.09 and related references to this section.

### **Exemption for Agriculture and Livestock**

We believe neither the intent nor the content of proposed NR 445 allows for the regulation of emissions from animal waste, animal waste byproducts or other agricultural waste, and we trust the department shares our position. However, we are concerned the potential exists for this rule to be interpreted in this manner and thus request the inclusion of the following language:

1. Emissions resulting from the degradation, digestion, processing, handling, treatment, storage or disposal of animal waste, animal waste byproducts or other agricultural waste from all agricultural facilities and livestock operations be exempt from any requirements imposed by, or arising from, Wisconsin Administrative Code Chapter NR 445 including, but not limited to, air permitting requirements.

2. Within the context of the clarification of the NR 445 exemption, “agricultural facility” and “livestock operation” be defined in accordance with the definitions currently contained in Wisconsin’s non-point water quality protection statute, ss. 281.16(a) and (c) Wis. Stats, respectively.
3. The Department shall identify any other statute or administrative rule under which the Department has, or may have, the authority to regulate odor or any other air emission from agricultural facilities or livestock operations in Wisconsin.

We appreciate the assistance of Department staff in providing information on the rule and the patience of the Department as we reviewed the rule. Thank you for your consideration of the modifications described in this letter.

Sincerely,



**Senator Neal Kedzie**  
Senate Environment and Natural Resources Chair  
11<sup>th</sup> Senate District



**Representative DuWayne Johnsrud**  
Assembly Natural Resources Chair  
96<sup>th</sup> Assembly District

NK:DJ:wu:dpj